IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8233 of 2002

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOTIBHAI KESHABHAI CHAUDHARY & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HM PARIKH for Applicant(s) : 1 - 2.
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2007

ORAL JUDGMENT

1. By way of this application under section 482 of the Criminal Procedure Code, the applicants – original accused have prayed for an appropriate

order to quash and set aside the FIR being I CR No. 142 of 2002 registered with Mansa Police Station filed by the respondent No.2 herein – original complainant for the offence under sections 406, 420, 465, 467, 468, 471, 120(B) and 114 of the Indian Penal Code.

2. An FIR is lodged with the Mansa Police Station by the respondent No.2 herein – original complainant against the applicant No.1 and others for the offence under sections 406, 420, 465, 467, 468, 471, 120(B) and 114 of the Indian Penal Code. It is required to be noted that the said complaint has been filed on 19.10.2002 and during the course of investigation, the applicants have preferred present application under section 482 of the Criminal Procedure Code to quash and set aside the said FIR.

3. It is the contention on behalf of the applicants that earlier father of the complainant herein had filed one private complaint in the Court of learned JMFC, Mansa against the applicants and

others for the same offence and incident and in that the learned JMFC, Mansa initially passed an order on 14.10.2002 sending the complaint to the Police Officer, Mansa Police Station for inquiry under section 202 of the Criminal Procedure Code, however, within 3 days the complainant of the said inquiry / criminal case No. 22 of 2002, father of the respondent No.2 herein, withdrew the said complaint and submitted an application on 17.10.2002 and the learned JMFC passed an order permitting the said complainant to withdraw the said complaint and immediately thereafter the impugned FIR has been filed on 19.10.2002 i.e. within 2 days of withdrawal of the aforesaid complaint. It is, therefore, submitted that when for the same offence and the incident, a complaint was filed and the same came to be withdrawn, second complaint / FIR before the police is not maintainable. It is also submitted by Shri Parikh, learned advocate appearing for the applicants – original accused that even on bare reading of the complaint / FIR, it does not disclose any cognizable

offence under the Indian Penal Code and therefore, the impugned FIR requires to be quashed and set aside as to continue the proceedings would be abuse of process of law.

4. On the other hand, Shri Mengde, learned APP while opposing present application has submitted that so far as the private complaint is concerned, the same was filed by the father of the respondent No.2 herein and the same has not been decided on merits. It is also further submitted that once the complaint was sent to the concerned Police Station for inquiry under section 202 of the Criminal Procedure Code and while the inquiry was in progress, the learned JMFC was not justified in permitting the original complainant to withdraw the said complaint and in fact, the learned JMFC should have waited till the inquiry report is submitted by the concerned Investigating Officer of Mansa Police Station. It is submitted that the order passed by the learned Magistrate permitting the complainant to withdraw the complaint after

sending the complaint for inquiry under section 202 of the Criminal Procedure Code and calling back the case papers from the concerned Investigating Officer of Mansa Police Station is unknown to law and there is no such provision under the Criminal Procedure Code. It is also further submitted by him that therefore, the complaint filed by the respondent No.2 with the police is not barred and/or it cannot be said that the same is not maintainable. It is also further submitted by him that looking to the averments and allegations in the complaint, further investigation is required and therefore, the FIR is not required to be quashed and set aside. It is also further submitted by him that statutory duty is caste upon the Investigating Officer to investigate the FIR and the offence and to interfere at this stage and to quash the complaint would be restraining the Investigating Officer from further investigating the case and therefore, it is requested to dismissed present application. Shri Mengde, learned APP has relied upon the decision of the Hon'ble Supreme Court

in case of ***Mahesh Chand V/s. B. Janardhan Reddy & Another*** reported in **2003(1) SCC 734** in support of his submitted that there is no bar of filing the second complaint under the provisions of the Criminal Procedure Code.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that the main contention on behalf of the applicants is that the father of the respondent No.2 – original complainant had earlier filed one private complaint in the Court of learned JMFC, Mansa being Inquiry Criminal Case No. 22 of 2002 for the same offences and against the very accused inclusive of the applicant No.1 and the learned Magistrate took the cognizance and thereafter the same came to be withdrawn by him and therefore the second complaint by the respondent No.2 for the same incident and offence is not maintainable. It is to be noted that in the said Inquiry Criminal Case No. 22 of

2002, the learned JMFC, Mansa passed an order to send the said complaint to the Police Officer in-charge of Mansa Police Station for the inquiry under section 202 of the Criminal Procedure Code and thereafter when the inquiry was going on, the original complainant submitted an application on 17.10.2002 (within 3 days itself) for withdrawing the said complaint and the learned Magistrate passed an order allowing the said complaint to withdraw the said complaint further directing to call back the case papers from the Police Officer in-charge of Mansa Police Station, which was sent to him for inquiry under section 202 of the Criminal Procedure Code. Once the complaint is sent to Police Officer in-charge of the Police Station for inquiry under section 202 of the Criminal Procedure Code thereafter till an appropriate report is submitted by the concerned Investigating Officer, the Magistrate has no jurisdiction to interfere with the same and he has no jurisdiction to pass any order in between inclusive of withdrawal of the complaint. Such a

procedure is unknown to the Criminal Procedure Code. At this stage, the decision of the Hon'ble Supreme Court in case of ***R.Sarala V/s. T.S. Velu & Others*** reported in **(2000) 4 SCC 459** is required to be referred to. Thus, apart from the fact that the said complaint has not been decided on merits, permitting the original complainant to withdraw the said private complaint itself was not legal. Whether the second complaint for the same incident / offence is maintainable or not has been considered by the Hon'ble Supreme Court in case of ***Mahesh Chand V/s. B. Janardhan Reddy & Another*** reported in **(2003) 1 SCC 734**. Considering the scheme of Criminal Procedure Code, the Hon'ble Supreme Court has specifically held that there is no bar of second complaint under the Criminal Procedure Code. In the facts stated hereinabove, even otherwise, for the reasons stated above, there is no bar or impediment in filing the impugned FIR / complaint by the respondent No.2 before the Mansa Police Station as neither the investigation / inquiry was completed in the

said private complaint which was subsequently withdrawn nor there is a decision on merits and more particularly when the order passed by the learned Magistrate permitting the original complainant of private complaint to withdraw the complaint and calling back the case papers, which were sent to the concerned Police Officer of Mansa Police Station for inquiry under section 202 of the Criminal Procedure Code itself is illegal. Under the circumstances, there is no substance in the submission of the applicants that the impugned FIR / complaint is not maintainable and/or the impugned FIR is required to be quashed and set aside on the ground that earlier private complaint for the same incident / offence has been withdrawn.

7. So far as the contention on behalf of the applicants that they have not committed any offence as alleged in the FIR and therefore the impugned complaint requires to be quashed and set aside is concerned, it is required to be noted that the investigation was in progress and

on bare reading of the averments and allegations in the FIR, it, prima facie, discloses cognizable offence, which requires further investigation. As held by the Hon'ble Supreme Court in case of ***State of Orissa & Another V/s. Saroj Kumar Sahoo*** reported in **2005 (13) SCC 540** and the subsequent decision of the Hon'ble Supreme Court in case of ***State of Karnataka & Another V/s. Pastor P. Raju*** reported in **AIR 2006 SC 2825**, the investigating officer is not required to be restrained from further investigating the cognizable offence. As held by the Hon'ble Supreme Court the Criminal Procedure Code authorizes the Investigating Officer / police to investigate cognizable offence and in the facts and circumstances of the case, the investigation is not to be stalled at the threshold and the complaint / FIR is not required to be quashed in exercise of the powers under section 482 of the Criminal Procedure Code. If, ultimately, on investigation it is found that no case is made out against the applicants, in that case, an appropriate report

can be submitted by the Investigating Officer and if the case is made out after investigation, in that case, the charge-sheet will be filed and the same can be considered in accordance with law and on merits. However, this is not a fit case to exercise powers under section 482 of the Criminal Procedure Code to stall the investigation and to quash the FIR / complaint at the threshold.

8. For the reasons stated above, application fails. Rule discharged. Ad-interim relief, granted earlier, stands vacated forthwith.

[M.R.Shah, J.]

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